

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 514 of 1998

with

CRIMINAL MISC.APPLICATION No 617 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MEGHABHAI JAGABHAI RAJPUT

Versus

AUNPSINH JILUBHA VAGHELA

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Appearance:

1. Criminal Misc.Application No. 514 of 1998  
MR NITIN M AMIN for Petitioner  
MR MEHUL SHARAD SHAH for Respondent No. 1  
PUBLIC PROSECUTOR for Respondent No. 3
2. Criminal Misc.ApplicationNo 617 of 1998  
PUBLIC PROSECUTOR for Petitioner  
PUBLIC PROSECUTOR for Respondent No. 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/03/98

## ORAL JUDGEMENT

1. Heard Mr.Nitin Amin, Ld.advocate for petitioner.

Rule. Ld.APP, Mr.K.T.Dave appears and waives service of rule on behalf of respondent-state. Mr.Mehul Shah appears and waives service of rule on behalf of respondent Nos 1 & 2. By consent of learned advocates for parties matter is taken for final hearing.

2. The petitioner is the original complainant of Cr.No.I-33/97 registered at Rapar police station against ten accused in all for the offence made punishable under sections 143, 146, 147, 148, 149, 302 and 307 IPC.

3. It may be noted that the accused Anupsinh Jilubha Vaghela and Ajubha Mahipatsinh Vaghela moved Cri.Misc.Appln.No.29/98 before the court of Ld.Addl.Sessions Judge, Kutch at Bhuj and by order dated 5.2.98 said Anupsinh Jilubha and Ajubha Mahipatsinh Vaghela are ordered to be released on bail of Rs.5000/and surety of like amount and on compliance of conditions imposed in the said order.

4. Petitioners have moved present petition for cancellation of bail granted to said Anupsinh Jilubha and Ajubha Mahipatsinh by the Ld.Addl.Sessions Judge, Kutch at Bhuj vide above stated order.

5. Mr.Nitin Amin, Ld.advocate for petitioner has referred to and relied upon the observations made by the Supreme Court in the matter of State of Maharashtra vs Ramesh Tanvar reported in 1`988 SCC (Crimes) 257 and has read that section 439 (2) Cr.P.C. can not be said to confine to the case covering subsequent event of granting bail to the accused in respect to tampering with the evidence or intimidating the witnesses or any ground. According Mr.Amin the Ld.Addl.Sessions Judge ought not to have enlarged the said two accused on bail in the facts and circumstances and to support the said submission Shri Amin has referred to and relied upon the statements made in the FIR.

6. As against that Mr.Mehul Shah, Ld.advocate for respondents have taken me through the impugned order passed by the Ld.Addl.Sessions Judge copy whereof is produced at annexure A at page 1 of the compilation and has urged that the Ld.Addl.Sessions Judge has observed in his order that so far as external injuries recorded in the medical certificate alleged to have been inflicted on the deceased by the accused do not tally with the

statements made by the witnesses and there is a reasonable doubt regarding the cause of death on account of injury inflicted by said persons. It is submitted that the complaint is a result of crystallized enmity between two groups as earlier complaint was filed against respondents and others and as they were released on bail. There was enmity between two groups and on account of said enmity respondents are involved in the said incident by giving a complaint. According to the submission of Mr.Mehul Shah that on the date of incident the deceased who was in the jeep proceeding got trouble and on account of loss of control by the driver accused had not dashed with the said jeep with tempo as alleged in the FIR. Investigation officer has recorded the statement of independent witnesses, driver and conductor of ST bus which has passed immediately near the scene of offence. Ld.Addl.Sessions Judge has taken into consideration of said circumstances.

7. I have carefully gone through the order and considering the facts and circumstances apparent from the record I do not find any supervening circumstances or any compelling reasons to cancel the bail already granted by the Ld.Addl.Sessions Judge after taking into consideration all the facts and circumstances apparent from the police papers. The observations of the Supreme Court referred to and relied on by Mr.Amin the above stated authority have no application the present case and thereby no discussion is necessary.

8. On the above stated discussion I hold that the petition fails and stands disposed of as rejected. Rule is discharged. Interim relief granted earlier shall stand vacated. No costs.

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